

July 5, 2017

Honorable Scott Pruitt
Administrator, US Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Notice of Intent to File Suit regarding Alleged Violation of TSCA

Dear Administrator Pruitt:

This is a notice of intent to sue to restrain alleged ongoing violations of the Toxic Substances Control Act ("TSCA") by Dow Agrosciences LLC ("Dow") pursuant to section 20(a)(1) of TSCA. As required by 40 CFR § 702.62(b), the details of the alleged violations are as follows:

(1). Specific TSCA Provisions Violated. Section 15 of TSCA provides that it is unlawful for any person to –

“(1) fail or refuse to comply with any requirement of this title or any rule promulgated . . . under this title; or . . .

“(3) fail or refuse to . . . submit reports, notices, or other information, . . . as required by this Act or a rule thereunder;”

EPA has promulgated a Chemical Data Reporting ("CDR") rule, 40 C.F.R. Pt. 711, using its authority under section 8(a) of TSCA. The CDR rule requires the submission of basic information about chemical manufacturing processes and use, and exposure profiles of commercially significant chemicals. Reporting is required for all chemicals manufactured or imported at a given site in amounts of 25,000 pounds or more per facility in a given reporting year. Reports must be filed on what the Agency calls a "Form U." Manufacturers and importers subject to the CDR must file these forms with the Agency every four years. The latest cycle was completed last fall, with reports due on October 31, 2016.

Failure to submit Form Us under the CDR is "unlawful" under section 15 and therefore constitutes a "violation of this Act" subject to a citizens' suit under section 20(a)(1) of TSCA. Such violations are continuing in nature because the obligation to report does not elapse on the reporting deadline but remains until the report is filed.

(2). Activity Constituting an Alleged Violation. Our understanding is that Dow imports n-Propyl Bromide ("nPB") for use in the US. We have not identified any Form Us in EPA's CDR database for the 2016 reporting cycle that list Dow's imports of nPB. However, a search of a commercial database (known as Panjiva) which organizes U.S. Customs and Border Protection records of container ship contents indicated 85,980 pounds of nPB was imported in December 2015.

According to Panjiva, the records for these shipments identify Dow as the importer of record. Since the import amounts exceed the 25,000 pound threshold for CDR reporting, Dow was required to identify them in a Form U filed with EPA.

(3). Person or Persons Responsible for the Alleged Violation. We believe that, as the importer of record for the nPB shipments, Dow was (and is) responsible for compliance with CDR reporting requirements under 40 CFR §711.8.

(4). Location of Alleged Violation. The CDR rule was developed and promulgated at EPA headquarters in Washington DC and reports must be filed with the Office of Chemical Safety and Pollution Prevention (OCSPP) at EPA's Washington DC office. Accordingly, we believe that this office was the site of the alleged violation.

Alternatively, as Dow was the importer of record for the shipments and is responsible for CDR compliance under EPA regulations, we believe Dow's corporate office in Indiana can also be considered the site of the alleged violations.

(5). Dates of Alleged Violations. Based on Panjiva shipping records, we identified December 23, 2015 as the date of nPB import by Dow.

There may have been additional imports in 2012 and 2013 triggering CDR reporting that we did not identify.

(6). Citizen and Legal Counsel Giving Notice. The citizens giving notice are:

Safer Chemicals Healthy Families
641 S St. NW 3rd Floor
Washington, DC 20001
(202) 793-3050
andyigrejas@saferchemicals.org

Environmental Health Strategy Center
565 Congress St., Ste. 204
Portland, ME 04101
(207) 699-5796
pmacroy@ourhealthyfuture.org

The notifying groups are represented by:

Robert M. Sussman, Esq.
Sussman and Associates
3133 Connecticut Avenue NW, #2405
Washington, DC 20008
bobsussman1@comcast.net
202-716-0118 (c); 202-758-2227 (o)

We are separately providing notice to Dow with its registered agent in Indiana and are attaching a copy of our notice letter.

Because nPB is a demonstrated hazard to human health and is among the first 10 substances on which EPA is conducting risk evaluations under revised TSCA, compliance with the CDR rule is of utmost importance. We request that EPA take immediate action to secure compliance by Dow and seek civil penalties for its TSCA violations.

Sincerely yours,



Andy Igrejas
Director
Safer Chemicals, Healthy Families



Michael Belliveau
Executive Director
Environmental Health Strategy Center

cc: Larry Starfield, Acting Assistant Administrator, EPA Office of Enforcement and Compliance Assistance
Wendy Cleland-Hamnett, Acting Assistant Administrator, EPA Office of Chemical Safety and Pollution Prevention